

Chapter CLXXVI.¹

DELEGATES.

1. Privileges on the floor. Sections 240–242.
 2. Service on committees. Sections 243, 244.
 3. Resident Commissioners of the Philippine Islands. Sections 245, 246.
-

240. A Delegate may make a point of order but may not vote.

A Delegate may make any motion which a Member may make, except the motion to reconsider.

Dicta by a Chairman expressing the opinion that former decisions denying Delegates the right to object to consideration were out of harmony with general decisions defining the rights of Delegates.

The rights and prerogatives of a Delegate in parliamentary matters are not limited to legislation affecting his own territory.

A provision limiting executive discretion is construed as legislation.

Requirement that the Secretary of the Interior should provide for Eskimo support and education “through the Bureau of Indian Affairs” was held to interfere with executive authority and to constitute legislation.

On December 11, 1930,² during the consideration of the Interior Department appropriation bill, in the Committee of the Whole House on the state of the Union the Clerk read, in part, as follows:

Natives in Alaska: To enable the Secretary of the Interior, in his discretion and under his direction through the Bureau of Indian Affairs, to provide for support and education of the Eskimos, Aleuts, Indians, and other natives of Alaska, including necessary traveling expenses of pupils to and from industrial boarding schools in Alaska.

Mr. Dan A. Sutherland, of Alaska, Delegate from the Territory of Alaska, asked to be recognized and said:

Mr. Chairman, I desire to raise a point of order on this paragraph, but I will first ask the Chair, if permissible, to rule on my right to raise such a point of order by reason of my status as a Delegate in the Congress. The floor privileges of a Delegate seem to be governed largely by precedent, and in this case I would ask for a ruling. I have endeavored to get Members to challenge my right, but none seems disposed to do so.

The Chairman³ ruled:

¹ Supplementary to Chapter XLIII.

² Third session Seventy-first Congress, Record, p. 607.

³ Carl R. Chindblom, of Illinois, Chairman.

The Delegate from Alaska rises for the purpose of making a point of order to a portion of the paragraph just read and directs to the Chair an inquiry as to his right to make a point of order and requests the occupant of the Chair to rule upon that issue.

The Chair has previously been advised of the purpose of the Delegate from Alaska and appreciates very much his procedure and conduct in the matter.

There has so far been no direct ruling upon this exact question, but the present occupant of the Chair has studied the law and the precedents quite thoroughly and is quite willing to answer the inquiry of the Delegate from Alaska. There are at the present time only two Territories, the Territory of Alaska and the Territory of Hawaii. There are two separate organic laws for the establishment of these Territories, and in some respects they are different.

In the case of the Territory of Alaska the Code of Laws, on page 1569, contains a provision paragraph 131, that—

“The people of the Territory of Alaska shall be represented by a Delegate in the House of Representatives of the United States chosen by the people thereof”—

And so on; but nowhere has the present occupant of the Chair found anything in this organic act defining the powers and privileges of the Delegate after he has become a Delegate and has presented himself in the House of Representatives.

In the case of the Territory of Hawaii however, there is an express provision, to be found on page 1607 of the Code of Laws, and reading as follows:

“Every such Delegate shall have a seat in the House of Representatives with the right of debate, but not of voting.”

The Chair, however, has found an ancient statute which apparently has never been repealed and which is quoted in many of the decisions of Chairmen of the Committee of the Whole, as well as by Speakers, which statute, the Chair will say, does not seem to be incorporated as yet in the code or any of the supplements to the code, but which may be found in the Revised Statutes of the United States, second edition, 1878, section 1862, reading as follows:

“Every Territory shall have the right to send a Delegate to the House of Representatives of the United States to serve during each Congress who shall be elected by the voters in the Territories qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the Governor duly elected and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating but not of voting.”

It will be noticed that this language was followed in the organic act for the election of a Delegate from the Territory of Hawaii. This act was passed and became effective on the 3d of March, 1817. The Chair believes it applicable to the Delegate from the Territory of Alaska.

In the House Manual, on page 316, will be found a rule of the House, Rule XII, section 1, to the effect that the House shall elect from among the Delegates one additional member on each of certain committees, and that these Delegates shall possess in their respective committees, the same powers and privileges as in the House, and may make any motion except to reconsider.

In the precedents cited in the manual, on page 316 of the current edition, 1929, will be found references to some of the decisions; and the Chair shall read a portion of the text in the manual:

“The law provides that on the floor of the House a Delegate may debate and he may in debate call a member to order (citing the precedent). He may make any motion which a member may make except the motion to reconsider. A Delegate has even moved an impeachment. He may be appointed a teller, but the law forbids him to vote, and he may not object to the consideration of a bill.”

Upon the general principles that the prohibition of one particular right permits other rights and the inclusion of one matter excludes all others, it seems to the Chair that there is no good reason for holding that the Delegate may not make a point of order, when as a matter of fact he may participate in all other parliamentary procedure; and certainly, if the Delegate is here for the purpose of promoting the interests of his constituents either by securing legislation or preventing legislation from being passed, it seems to the present occupant of the chair that he should have the right to insist that the House follow its own rules. That is what is meant by the inter-

position of a point of order. The point of order is interposed to call attention to a rule of the House that is being violated by the House itself, at least, whenever the rule involved relates to the passage of legislation.

The Chair, therefore, with all deference, is of the opinion that the Delegate from Alaska is entitled to raise the point of order.

The Chair would like to add that on page 862 in Hinds' Precedents, section 1291, it will be found that a Delegate was permitted to make a motion to suspend the rules and he was permitted to move to discharge a standing committee from further consideration of a bill. He was permitted to make that motion, and when the motion was put he moved the previous question. A point of order was made against the right of the Delegate to move the previous question, and that specific point of order was overruled and the Delegate was permitted to move the previous question.

If a Delegate can move to suspend the rules and pass legislation, notwithstanding the rules of the House, and if he can move the previous question so as to put an end to debate and to the offering of amendments, it seems to the Chair there can be no reason for denying him the right to make a point of order which compels the House to follow its own rules.

Mr. William B. Bankhead, of Alabama, interposed to inquire if the Chairman was to be understood as holding that a Delegate was restricted in his parliamentary rights to matters pertaining to his own Territory.

The Chairman replied:

No; not at all. There has been a specific holding that he may not move to reconsider a vote and that seems logical inasmuch as he can not vote, and therefore should not be permitted to make a motion to reconsider a vote. Aside from that there is only this one precedent to which the Chair has called attention, which would militate against the position of the present occupant of the chair, and that decision the Chair believes to be out of line with the general trend of opinion as to the rights of a Delegate from a Territory.

The Chair thinks that the Delegate is here for all purposes of legislation, and the Chair did not intend to limit him as to his rights as to the particular Territory he represents. The truth is, he comes as a Delegate to represent his Territory, but in order to discharge his full duties to his constituency, it seems to the Chair that he must have these complete privileges.

As to the right of a Delegate to object to the consideration of a bill the Chairman continued:

The Chair will state with reference to the last precedent, which is found in volume 2 of Hinds' Precedents, sections 1923 and 1924, the present occupant of the chair is inclined to think that that decision is out of line with the other decisions with reference to the rights and privileges of Delegates.

The Chair is speaking now of the right to object to the consideration of a bill. That is the only precedent which would militate against the right of a Delegate to raise a point of order, so far as the present occupant of the chair has been able to find; but the present occupant of the chair believes that that decision is out of line with all the other decisions relative to the powers and privileges of Delegates.

This particular question as to the right of a Delegate to object to the consideration of a bill is quoted in Hinds' Precedents, second volume, page 863, paragraph 1293. A bill was pending before the House on June 6, 1866, making appropriations to negotiate certain treaties with certain Indian tribes.

Here the Chairman quoted from the section referred to and resumed:

It seems to the present occupant of the chair that the conclusion of the argument does not follow from the premise. It will be found in numerous cases that the right of a Delegate not only to represent his views upon pending legislation but to participate in parliamentary proce-

ture as well has been recognized, and it seems to the present occupant of the chair that if a Delegate representing a Territory is to have a seat in the House for the purpose of representing his constituency, for the purpose of assisting in the passing of legislation which may be beneficial to his constituency, except by voting, and, of course, conversely to assist in preventing the passage of legislation which he may deem harmful to his constituency, then the right to debate and have a seat on the floor of the House should also include the right for him to take part in the parliamentary procedure except only the single right to vote.

In response to an inquiry by Mr. Bankhead, the Chairman added:

In the particular case to which the Chair has referred the objection was not made on a Consent Calendar day. There was no Consent Calendar at that time. The objection was to the consideration of a bill upon the ground that it should be considered in the Committee of the Whole House on the state of the Union, and not in the House. So, therefore, it was in fact a point of order.

Thereupon, Mr. Sutherland made the point of order that the language "through the Bureau of Indian Affairs" in the pending amendment proposed a restriction on the executive discretion of the Secretary of the Interior and was therefore a proposal to incorporate legislation in a general appropriation bill.

The Chairman sustained the point of order and said:

The Chair is required to rule only upon the words "through the Bureau of Indian Affairs." The present occupant of the chair does not mean to say his judgment would be foreclosed by the concession of the point of order if he did not agree with the concession. As it happens, the Chair does agree with the concession that these lines are subject to a point of order, and with reference to the words "through the Bureau of Indian Affairs," it seems to the Chair that they do infringe upon the present wide authority of the Secretary of the Interior, who may use any agency under his control under the existing law, and it might be held to be a pro tanto repeal of the law of 1927, to which the chairman of the committee called attention, inasmuch as this would be a later enactment than the general law of 1927.

For these reasons the Chair feels constrained to sustain the point of order as to the words "through the Bureau of Indian Affairs."

The Chair sustains the point of order.

241. Instance wherein a Delegate was recognized to object to the consideration of a measure.¹

Under the circumstances, as the action of the Delegate was not contested at the time, it is questionable whether this instance is of any great binding value and should not be regarded as a passing incident in the stress and confusion attending the call, of the Consent Calendar.

It might well be argued that such objection is equivalent to a vote against the measure. True, the right to object is in exercise of a parliamentary privilege under the rules in harmony with the decision of the Chairman as to raising a point of order, but would a Delegate, following the logic of that decision, ordinarily have the right to object to the many requests for unanimous consent coming up in the House and, if so, would it not be tantamount to voting?

On December 11, 1930,² the right of a Delegate to object to the consideration of a measure was debated in the Committee of the Whole and, while the question was not directly presented, the Chairman³ expressed the opinion that the former practice in that respect was inconsistent with the general rights accorded Delegates and should be revised.

¹ See section 1293 of Hinds' Precedents.

² Third session Seventy-first Congress, Record, p. 603.

³ Carl R. Chindblom, of Illinois, Chairman.

On the following Monday,¹ during the call of the Consent Calendar, the bill (S. 4142) to fix the salary of the Governor of the Territory of Alaska was reached.

Mr. Dan A. Sutherland, of Alaska, rose in his place and objected to the consideration of the measure.

The Speaker pro tempore² recognized him for that purpose and, the objection being entered, the bill was stricken from the Consent Calendar.

242. Delegates are elected as additional members of certain committees, where they possess the same powers and privileges and may make any motion except to reconsider.

Form and history of section 1 of Rule XII.

Rule XII, section 1, provides:

The House shall elect from among the Delegates one additional member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; the Post Office and Post Roads; Public Lands; Indian Affairs; and Mines and Mining; and two on Territories; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider.

This rule originally provided for the appointment of Delegates to these committees by the Speaker, but with the amendment of the rules in the revision of 1911,³ providing for the election of all committees by the House, the rule was amended to conform to that requirement.

The abolition of the Committee on Private Land Claims in the same revision required the elimination of that committee from those named in the rule. Otherwise the rule retains the form adopted in 1892.

243. Discussion of status of a Delegate as a member of a standing committee.

Determination by a committee that a Delegate as a member of the committee has the right to debate but not to vote.

On January 18, 1932,⁴ Mr. Edgar Howard, of Nebraska, from the Committee on Indian Affairs, included under leave to extend his remarks in the Record the following:

Hon. EDGAR HOWARD,

Chairman Indian Affairs Committee of the

House of Representatives:

At the meeting of this committee on January 5, 1932, the chairman propounded the following question and asked the subcommittee on rules to examine and report upon the same, to wit:

"Whether or not a Delegate from a Territory of the United States, regularly assigned to the Committee on Indian Affairs of the House, should be accorded a vote in the committee?"

Upon this question your subcommittee on rules makes the following report—

"The Constitution of the United States, Article I, section 2, provides that:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States," and in the same section that "no person shall be a Representative who shall not have attained the age of 25 years and been seven year a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

¹ Record, p. 747.

² Bertrand H. Snell, of New York, Speaker pro tempore.

³ First session Sixty-second Congress, Record, p. 80; Journal. p. 40.

⁴ First session Seventy-second Congress, Record, p. 2163.

Nowhere in the Constitution is mentioned an office such as "Delegate to Congress."

From the foregoing provisions it is plain that only Representatives elected from a State can be Members of the House of Representatives.

The Constitution, Article IV, section 3, provides that: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States."

By reason of the exclusive sovereignty which the Government of the United States exercises over all territory owned by the United States not within the boundaries of a State, and the power given by the above section of the Constitution, Congress has organized Territorial governments in such Territories and has in each instance authorized the inhabitants under certain conditions to elect a Delegate to Congress.

The first Territorial government was authorized by the Continental Congress on July 13, 1787, by "An ordinance for the Government of the United States northwest of the River Ohio" which authorized the inhabitants of that Territory under conditions prescribed to elect a Delegate to Congress who should have the "right of debating but not of voting."

On March 3, 1817, Congress passed "An act further to regulate the Territories of the United States and their Delegates to Congress."

This act is general in its nature and applies to all Territories. It provides that "every such Delegate shall have a seat in the House of Representatives with the right of debating but not of voting."

From the foregoing it is apparent that a Delegate to Congress from a Territory is not a Member of the House of Representatives. Nowhere in the Constitution nor in the statutes can the intention be found to clothe the Delegate with legislative power.

Rule X of the Rules of the House of Representatives of the Seventy-first Congress (which rule has not been changed in the Seventy-second Congress) reads:

"There shall be elected by the House, at the commencement of each Congress, the following standing committees" (naming them in order).

Rule XII, paragraph 1, reads:

"The House shall elect from among the Delegates one additional member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; and Mines and Mining; and two on Territories; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider."

Manifestly, the House could not elect to one of its standing committees a person not a Member of the House. The designation "additional member" applied to a Delegate clearly indicates the character of the assignment. Expressly the Delegate shall exercise in the committee to which he becomes an additional member the same powers and privileges as in the House, to wit, the "right of debating, but not the right of voting."

244. The privileges of the floor with the right to debate were extended to Resident Commissioners in the Sixtieth Congress. On February 4, 1908,¹ Mr. Dalzell, of Pennsylvania, submitted a report from the Committee on Rules recommending the adoption of the following:

"Resolved, That the privileges of the floor, with the right of debate, be extended to the two Resident Commissioners appointed by the Philippine assembly in accordance with the provisions of the act approved July 1, 1902."

Mr. James R. Mann, of Illinois, a member of the commission in control of the House Office Building, called attention to a regulation providing that allotment of offices in the House Office Building was contingent on the right to a seat on the floor, and inquired if under the pending resolution Resident Commissioners would be entitled to seats on the floor, Mr. Dalzell replied to the effect that the right to the privileges of the floor with right to debate necessarily implied a right to a seat on the floor.

The resolution was unanimously agreed to.

¹First session Sixtieth Congress, Record, p. 1540.

245. By order of the House the Resident Commissioners of the Philippine Islands were granted the right of debate, and assigned to offices in the House Office Building.

On January 7, 1910,¹ Mr. John Dalzell, of Pennsylvania, presented by unanimous consent the following:

Ordered, That the privileges of the floor, with the right of debate, be extended to Benito Legards and Manuel L. Quezon, Resident Commissioners appointed by the Philippine legislature in accordance with the provisions of the act approved July 1, 1902.

Mr. James R. Mann, of Illinois, offered the following amendment:

Amend by adding:

“And ordered further, That the said Resident Commissioners be entitled to have offices in the House Office Building.”

The amendment was agreed to and the order as amended was passed.

246. By general acquiescence the Resident Commissioners of the Philippine Islands have been permitted the privilege of debating.

On April 14, 1911,² Mr. Finis J. Garrett, of Tennessee, submitted by unanimous consent the following resolution which was agreed to by the House.

Resolved, That the right of debate be extended to the two Resident Commissioners from the Philippine Islands.

While the right extended by the resolution has not since been renewed or incorporated in the rules of the House, the commissioners have been recognized for debate in each succeeding Congress without objection.

¹ Second session Sixty-first Congress, Record, p. 406; Journal, p. 131

² First session Sixty-second Congress, Record, p. 253; Journal, p. 106.